

## **REMARKS**

The present amendment is in response to the Office Action dated June 28, 2004, where the Examiner allowed claims 15, and 17-19. Claims 1, 2, 6-9, 13 and 14 were rejected to 35 USC 102 grounds. Claims 3-5, 10-12, and 16 were objected and would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim. Additionally, the Detailed Action identified informalities to the Specification, and Claim Objection to claims 4, 11, and 16.

By the present amendment, the informalities in the Specification and the Claim Objections in the Detailed Action are addressed. Additionally, the Applicant responds to the grounds for claim rejection in claims 1,2, 6-9, 13 and 14.

### **A. Specification**

The Examiner identified the informalities on page 2, line 8 of the Specification and requested correction of the appropriate serial number of the referenced patent application. The identified corrections have been made as indicated in the Amendments above.

### **B. Claim Objections**

The Examiner has objected to claim 4, 11, and 16 for informalities caused by letter spacing, namely, related to the following phrase: “N<sub>2</sub>Ogas.” Applicant has amended the claims to provide the appropriate letter spacing. As a result the claims 4, 11 and 16 have been currently amended to refer to “N<sub>2</sub>O gas.”

**C. Claim Rejections – 35 USC § 102**

The Examiner has rejected independent claims 1 and 8 and dependent claims 2, 6-7, 9, 13 and 14 under 35 USC 102(a) as being anticipated by Li et al. (Li), U.S. Patent Application No. 2004/0038540 hereinafter referred to as “Li ‘540.” Applicant respectfully disagrees.

The knowledge referred to in Section 102 (a) must consist of complete and adequate description of the invention (i.e. the knowledge must be sufficient to the reduce the invention to practice). *Connecticut Valley Enters v. United States*, 348 F. 2d 949, 146 USPQ 404, 406 (Ct. Clo. 1964) (per curiam). As the Federal Circuit stated in *W.L. Gore & Associates v. Garlock, Inc.* “anticipation requires the disclosure in single prior art reference of each element of the claim under consideration.” *W.L. Gore & Associates V. Garlock*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

Regarding independent claims 1 and 8, the Applicant’s independent claims refer to feeding a nitrous oxide (N<sub>2</sub>O) gas mixture. The Examiner’s Li ‘540 reference fails to teach the use of a nitrous oxide (N<sub>2</sub>O) gas mixture. In particular the language cited by the Examiner states in part “the organic layer is then etched back using gas mixture that includes either H<sub>2</sub>, O<sub>2</sub> or N<sub>2</sub> or any combination thereof.” See Paragraph 28 in Li ‘540.

The Applicant has thoroughly reviewed Li ‘540 and can not find any reference to the use of nitrous oxide (N<sub>2</sub>O). Thus, the Applicant respectfully submits that the Examiner has failed to meet the prima facie requirements for anticipation, namely all elements of the claims must be disclosed in the cited prior art.

Additionally, the Applicant contends that it would NOT have been obvious to use nitrous oxide (N<sub>2</sub>O) gas. The Applicant’s patent application teaches the difference

between nitrous oxide (N<sub>2</sub>O) and other gases and includes a Table 2 that describes these differences in further detail. See Page 14: line 8 through Page 15: line 14 of Applicant's Patent Application. The Examiner shall appreciate that the chemical structure of nitrous oxide (N<sub>2</sub>O) is substantially different from nitrogen (N<sub>2</sub>) gas, oxygen (O<sub>2</sub>) gas, and the combination of nitrogen gas and oxygen gas. Additionally, as reflected in Table 2 of the Applicant's patent application, the results associated with the use of nitrous oxide (N<sub>2</sub>O) gas were unobvious. Thus, the Applicant respectfully submits that it would not even have been obvious to use nitrous oxide (N<sub>2</sub>O) gas in the etch back process.

In light of the arguments made by the Applicant, the Applicant contends that independent claims 1 and 8 are in a state of allowance.

The dependent claims 2, 6, and 7 depend on independent claim 1. The dependent claims 9, 13, and 15 depend on independent claim 8. Since the Applicant contends that independent claim 1 and independent claim 8 are in a state of allowance, each of the related dependent claims should also be viewed as being in a state of allowance.

Because the Applicant submits that the independent claims 1 and 8 are in a state of allowance, the Applicant has not responded to the Examiner's remaining claim objections for dependent claims 2, 6, 7, 9, 13 and 15. If necessary, the Applicant reserves the right to respond to these objections at a later time. The Applicant respectfully submits that Applicant's rights are not prejudiced by failing to respond to the objections presented for each of the dependent claims identified above. Should the Examiner require a response to each of the dependent claims, Applicant respectfully requests such instruction.

**D. Conclusion**

For all the foregoing reasons, allowance of independent claims 1 and 8 and dependent claims 2, 6-7, 9, 13 and 14 pending in the present application is respectfully requested.

Respectfully Submitted;

Dated: 10/28/08



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